Warden therefore, had no discretion in 1924. The case of *Yap Foong* v. *Salak South Ltd.*, Innes' Registration of Title 145, was cited, in support of this contention. The argument is that his absolute right to cancellation, unfettered by any discretion in the Warden, is preserved after the passing of the 1928 Enactment by Section 15 (ii) of the Interpretation and General Clauses Enactment 1932, which reads as follows:—

> 15. "Whenever any written law repeals wholly or in part a former written law, such repeal shall not, in the absence of any express provision to the contrary, affect or be deemed to have affected.
>
> (ii) "any right, liberty, privilege, obligation or liability acquired, imposed or incurred under the repealed written law;"

It is said that he acquired a right under his contract to absolute cancellation in certain circumstances and that that right is preserved.

If that contention is correct, the Warden has no discretion in applications for the cancellation of subleases which were made under the 1911 and earlier enactments.

In my opinion that argument applies only to cases in which the breach occurred and rights were acquired under the older enactments. In the present case the breach did not occur, and no rights, therefore, were acquired in respect of it till after the coming into operation of the 1928 Enactment.

The rights of the respondent must therefore be determined under the 1928 Enactment, which expressly confers a discretion on the Warden.

It was further argued on behalf of the respondent that the English authorities on relief against forfciture, cited by the appellant, have no application, on the ground that the plaintiff's right to cancellation is statutory and there is no statutory right to relief.

No authorities were cited in support of this proposition, and in my opinion it is not good law. There is an *obiter dictum* by Edmonds, J. C., in *Lai Yew Seng* v. *Wong Chin Gook*, 2 F.M.S. Law Reports 112, that in the case of a lease under the Land Code the Court will relieve against forfeiture on the tenant tendering or paying into Court the rent and costs. That is a statement of the law with which I respectfully agree.

It is finally argued for the respondent, that even if equitable principles are applicable, it would not be equitable to relieve in this case, because the appellant's breach has made the respondent liable to penalties under clause 3 of the sublease, and that if he were held liable he might have difficulty in recovering from the appellant in view of the financial position of the Company.

This argument is not based on any evidence, and seems to me to be entirely imaginary. I am satisfied that the relief asked for will in no way prejudice the respondent.

In my opinion a discretion is conferred on the Warden by Section 97(ii) of the 1928 Enactment. It is a discretion which must be exercised judicially, that is to say, having regard to the principles of law and equity.

As the appellant had tendered the arrears of tribute in full, the Warden ought to have exercised his discretion in his favour, on condition that he paid the costs of the application.

The appeal will be allowed.

The decision of the Warden will be reversed.

There will be an order that the plaintiff's application be dismissed.

The costs of the proceedings in the Warden's Court will be paid by the appellant.

The costs of the appeal will be paid by the respondent.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

MUDIE, J.

October 11, 1933.

BANSI RAM.....Plaintiff.

vs.

1. NIHAL SINGH

2. INDER SINGH

[IPOH CIVIL SUIT No. 1102 of 1933]

[REVIEW OF RULING OF 2nd MAGISTRATE IPOH AS TO COSTS]

Costs in Magistrates' Courts—Rules under Courts Enactment—Advocacy fee.

The fee for advocacy under the Scale of Costs in the Courts of Magistrates laid down under the rules published in Gazette Notification 8430 of November 18th 1932 is chargeable whether the claim is contested or judgment is given by confession, or consent, or default of appearance.

At the hearing the plaintiff was represented by advocate. Judgment was given without argument by admission in the case of one defendant and by default in the case of the other.

The Magistrate disallowed the fee for advocacy and under Rule 2(x) submitted the record to the Supreme Court.

MUDIE, J.—The fee for advocacy includes getting up the case. Counsel had to come prepared to argue the case, though, as it happened, no argument was necessary.

The advocacy fee is properly chargeable not only where the claim is contested, but in cases where judgment is obtained by confession or consent or by default of appearance at the trial.

There will be an order that the fee for advocacy be allowed.

Order accordingly.